



U.S. Department of Justice

*United States Attorney
Southern District of New York*

*86 Chambers Street, 3rd Floor
New York, New York 10007*

November 14, 2013

VIA ECF

The Honorable P. Kevin Castel
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: *United States et al. v. Hawker Beechcraft Corporation*,
13 Misc. 373 (PKC)

Dear Judge Castel:

We write on behalf of the United States in connection with the above-referenced motion for leave to take an interlocutory appeal from an order partially dismissing an adversary proceeding brought pursuant to the False Claims Act, 31 U.S.C. § 3729 *et seq* ("FCA"). The bankruptcy court in the above-referenced matter found that False Claims Act cases brought against corporate debtors are discharged in bankruptcy if an adversary proceeding is not filed shortly after the commencement of the bankruptcy proceeding. Although the United States has not intervened in the underlying case, it remains the real party in interest. *See United States ex rel. Eisenstein v. City of New York*, 556 U.S. 928, 930 (2009). Furthermore, as the FCA is the United States' primary tool to redress fraud on the Government, the United States has a keen interest in the development of the law in this area.

The Government does not take a position as to whether interlocutory appeal should be granted. Rather, we write to inform the Court that, should leave to file an interlocutory appeal be granted, the Government may file a statement of interest in this matter pursuant to 28 U.S.C. § 517,¹ urging that the decision of the bankruptcy court be reversed. Accordingly, the Government respectfully requests that, in any briefing schedule set by the Court, the Government be afforded an opportunity to submit its statement of interest.

We thank the Court for its consideration of this matter.

¹ Pursuant to 28 U.S.C. § 517, the Attorney General of the United States may send any officer of the Department of Justice to "attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State . . ." The submission of a statement of interest does not constitute an intervention in this action but is the equivalent of an *amicus curiae* brief. *See Flatow v. Islamic Republic of Iran*, 305 F.3d 1249, 1252-53 & n.5 (D.C. Cir. 2002).

Respectfully submitted,

PREET BHARARA
United States Attorney

By: s/Louis A. Pellegrino
LOUIS A. PELLEGRINO
LAWRENCE H. FOGELMAN
Assistant United States Attorneys
86 Chambers Street, 3rd Floor
New York, New York 10007
Tel.: (212) 637-2689/2719
Fax: (212) 637-2730/2686

cc: By Email

Wayne H. Davis, Esq. and Tammy Phyllis Bieber, Esq.
F. James Robinson, Jr., Esq. and Gaye B. Tibbets, Esq.
Attorneys for Donald Minge and David Kiehl

Paul Basta, Esq. and James H.M. Sprayregen, Esq.
Attorneys for Hawker Beechcraft Corp.